



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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JUN 01 2015

U.I.L 402.08-00

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T:EP:RA:T3

Legend:

Decedent A = XXXXXXXXXXXXXXXXXXXX

Taxpayer B = XXXXXXXXXXXXXXXXXXXX

Plan X = XXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXf

Company C = XXXXXXXXXXXXXXXXXXXX

Financial Institution D = XXXXXXXXXXXXXXXXXXXX

Financial Institution E = XXXXXXXXXXXXXXXXXXXX

Bank F = XXXXXXXXXXXXXXXXXXXX

State M = XXXXXXXXXXXXXXXXXXXX

Amount 1 = XXXXXXXXXXXXXXXXXXXX

Amount 2 = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxx:

This letter is in response to your request dated July 10, 2014, as supplemented by correspondence dated December 8, 2014, February 4, 2015, and April 23, 2015, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer B represents that Decedent A requested a direct rollover of Amount 2 from Plan X into IRA Y with Company C. Taxpayer B asserts that Decedent A's failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to the custodian of Plan X, Financial Institution D, not making a trustee-to-trustee transfer of Amount 2 into IRA Y.

Upon his retirement, on Date 1, Decedent A executed a distribution form from Plan X and elected a trustee-to-trustee transfer of Amount 2 into IRA Y. Eleven days after completing the distribution form, on Date 2, Decedent A passed away. On Date 3, Financial Institution D deposited Amount 1 into Taxpayer B's checking account at Bank F. Taxpayer B represents that Amount 2 has not been used for any other purpose and remains in an account with Financial Institution E where Amount 2 is fully liquid and available to be rolled over.

Based on the foregoing facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount 2.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

Section 402(c)(8)(B) of the Code provides that an eligible retirement plan includes (i) an eligible retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a qualified trust, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer B is consistent with her assertion that Decedent A's failure to accomplish a rollover within the 60-day period was due to the custodian of Plan X, Financial Institution D, not making a trustee-to-trustee transfer of Amount 2 into IRA Y as Decedent A had requested.

Assuming that Taxpayer B, as personal representative of Decedent A's estate, is authorized under the laws of State M to complete a rollover of the distribution of Amount 2, pursuant to section 402(c)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from Plan X. Taxpayer B is granted a period of 60 days from the issuance of this letter ruling to contribute an amount not more than Amount 2 into a rollover IRA in the name of Decedent A. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, the contribution of Amount 2 will be considered a rollover contribution within the meaning of section 402(c)(3) .

However, it is noted that, to the extent that you, as executor and sole beneficiary of Decedent A's estate, name a beneficiary of the IRA, section 1.401(a)(9)-4, Q&A-4, of the Regulations provides that a designated beneficiary must be a beneficiary as of the date of death. The Service will not treat any beneficiary named by you, as personal representative of Decedent A's estate, as a designated beneficiary under section 401(a)(9). Thus, for purposes of section 401(a)(9), the rollover IRA will have no designated beneficiary.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

In addition, the scope of Taxpayer B's authority as personal representative of Decedent A's estate is a matter governed by state law. This ruling assumes Taxpayer B's actions as personal representative of Decedent A's estate relevant to the ruling request contained herein are in accordance with the laws of State M.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file with this office.

If you have any questions concerning this letter, please contact xxxxxxxxxxxxxx, xxxxxxxxxxxxxxxx, at xxxxxxxxxxxxxxxx. All correspondence should be addressed to SE:T: EP: RA:T:2.

Sincerely yours,



Sherri M. Edelman, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

cc:

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